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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,178	09/25/2003	Donna Hougland	127.01-P-USA	7208
30040	7590	07/17/2006	EXAMINER	
MICHAEL A. SHIPPEY, PH. D. 4848 LAKEVIEW AVENUE SUITE B YORBA LINDA, CA 92886			GOODMAN, CHARLES	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,178

Applicant(s)

HOUGLAND, DONNA

Examiner

Charles Goodman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 6-12, 15, 16 and 19-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3, 6-12, 15, 16 and 19-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed on January 4, 2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 3, the phrase "the enclosed chamber" lacks clear antecedent basis.

- b. Claim 7 is vague and indefinite to the extent that "conventional spoon shape" is not defined. Spoons come in a variety of shapes and sizes and what is conventional is beyond the scope of the claim. To further explain, the only positive limitation wherein the scope thereof may be determined is in the tip having a straight edge. In contrast, the "more narrow and convex" limitation cannot be determined when "conventional spoon shape" is not well defined by any type of standard.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (US Des. 134,658).

Cole teaches a salt spoon comprising all the elements claimed including, inter alia, a bowl portion comprising a lower depressed concave section (note Figs. 2 & 4); an outwardly curved upper shield section (compare Figs. 1 and 2); an open cavity with an anterior and posterior opening; the anterior opening (one of the circular openings) is tubular in shape (due to the fact that the opening is through the thickness of the shield section); and the posterior opening is larger than the anterior opening and is the same is angled (Fig. 2).

Regarding the intended use functional language, e.g. "...enabling an infant to feed by using a sucking action", they have not been given significant patentable weight, since it has been held that expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim, *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997); *In re Swinehart*, 439 F.2d 210, 212-213, 169 USPQ 226, 228-29 (CCPA 1971; *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Regarding claim 3, the anterior opening in Cole is ovoid. Note Fig. 3.

Regarding claim 6, the upper shield section is asymmetrical to the extent that it does not have a mirror shape with respect to the bowl.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-12, 15, 16 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole (US Des. 134,658).

Cole discloses the invention substantially as claimed except for the specific material make up of the device. However, it is clear and inherent that the spoon of Cole is comprised of some sort of material. Moreover, the claimed materials and coatings are deemed to be common materials known to the ordinary artisan in the spoon arts that provide a sturdy, safe and sanitary tool. In that regard, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Cole with the specific materials as claimed in order to produce a spoon that is safe, sanitary and long lasting, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 3, 6-12, 15, 16 and 19-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (571) 272-4508. The examiner can normally be reached on Monday-Friday between 8:30 AM to 6:00 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley, can be reached on (571) 272-4502. In lieu of mailing, it is encouraged that all formal responses be faxed to (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

cg
July 10, 2006


Charles Goodman
Primary Examiner
AU 3724

CHARLES GOODMAN
PRIMARY EXAMINER